

# Behaviour Policy

## Appendix 2 – Prohibited or Banned Items, Searching and Confiscations

**Important - Please note, that where the word 'search' is used then this means the following:**

The power to search enables a personal search, involving removal of outer clothing and searching of pockets; but not an intimate search going further than that, which only a person with more extensive powers (e.g. a police officer) can do. If a search is conducted by a police officer then a member of staff must be present.

### **Searching -**

School staff can search a pupil for any item if the pupil agrees (the ability to give consent may be influenced by the child's age or other factors). The Headteacher and the leadership team have a statutory power to search pupils or their possessions, without consent, where they have reasonable grounds for suspecting that the pupil may have a prohibited item.

**Prohibited** items are:

- knives or weapons
- alcohol
- illegal drugs
- stolen items
- tobacco and cigarette papers
- fireworks
- pornographic images
- any article that the member of staff reasonably suspects has been, or is likely to be, used:
  - to commit an offence, or
  - to cause personal injury to, or damage to the property of, any person (including the pupil).

### **Confiscation**

School staff can seize any prohibited item found as a result of a search. They can also seize any item, they consider harmful or detrimental to school discipline.

Schools' obligations under the European Convention on Human Rights (ECHR) Under article 8 of the European Convention on Human Rights pupils have a right to respect for their private life. In the context of these particular powers, this means that pupils have the right to expect a reasonable level of personal privacy. The right under Article 8 is not absolute, it can be interfered with but any interference with this right by a school (or any public body) must be justified and proportionate. The powers to search in the Education Act 1996 are compatible with Article 8. A school exercising those powers lawfully should have no difficulty in demonstrating that it has also acted in accordance with Article 8. This advice will assist schools in deciding how to exercise the searching powers in a lawful way.

## **Searching without consent -**

Schools' common law powers to search: School staff can search pupils with their consent for any item.

Also note:

Schools are not required to have formal written consent from the pupil for this sort of search – it is enough for the teacher to ask the pupil to turn out his or her pockets or if the teacher can look in the pupil's bag and for the pupil to agree. If a member of staff suspects a pupil has a banned item in his/her possession, they can instruct the pupil to turn out his or her pockets or bag and if the pupil refuses, the teacher can apply an appropriate consequence/ sanction. If a pupil refuses to co-operate when instructed by a member of staff – schools can apply an appropriate discipline.

What the law says:

What can be searched for?

Knives or weapons, alcohol, illegal drugs and stolen items; and

Tobacco and cigarette papers, fireworks and pornographic images; and

Any article that the member of staff reasonably suspects has been, or is likely to be, used to commit an offence, or to cause personal injury, or damage to property; and

Any item banned by the school rules which has been identified in the rules as an item which may be searched for.

## **How should a search be conducted?**

You must be the same sex as the pupil being searched; and there must be a witness (also a staff member) and, if possible, they should be the same sex as the pupil being searched.

You can carry out a search of a pupil of the opposite sex to you and / or without a witness present, but only where you reasonably believe that there is a risk that serious harm will be caused to a person if you do not conduct the search immediately and where it is not reasonably practicable to summon another member of staff.

## **When can I search?**

If you have reasonable grounds for suspecting that a pupil is in possession of a prohibited item.

Also note:

The law also says what must be done with prohibited items which are seized, following a search.

The requirement that the searcher is the same sex as the pupil and that a witness is present will continue to apply in nearly all searches. Where it is practicable to summon a staff member of the same sex as the pupil and a witness then the teachers wishing to conduct a search must do so.

## **Searches for items banned by the school rules -**

An item banned by the school rules may only be searched for under these powers if it has been identified in the school rules as an item that can be searched for.

The school rules must be determined and publicised by the Headteacher in accordance with section 89 of the Education and Inspections Act 2006 in maintained schools. In the case of academy schools and alternative provision academies, the school rules must be determined in accordance with the School Behaviour (Determination and Publicising of Measures in Academies) Regulations 2012.

**Banned items** include:

chains  
catapults  
lighters and matches  
tools (scissors, hammer, nails, etc)  
pepper sprays and gas canisters  
E-cigarettes  
stink bombs  
solvents  
chewing gum  
energy drinks  
super Glue  
needles (syringes if required for medical grounds should be kept in accordance with school protocols)  
Any item fashioned to cause injury i.e. a sharpened stick, shard of glass  
laser pens  
dangerous chemicals (acids, hair dyes, bleaches, nail varnish remover, etc)  
aerosol (including deodorant and hair spray)  
offensive material - pornographic, racist, homophobic, extremist material (in any medium)  
rope, cable ties  
mobile devices and SMART watches with internet access

### **Location of a search**

Searches without consent can only be carried out on the school premises or, if elsewhere, where the member of staff has lawful control or charge of the pupil, for example on school trips in England or in training settings.

### **During the search**

Extent of the search – clothes, possessions and desks/ trays. What the law says: The person conducting the search may not require the pupil to remove any clothing other than outer clothing.

‘Outer clothing’ means clothing that is not worn next to the skin or immediately over a garment that is being worn as underwear but ‘outer clothing’ includes hats, shoes, boots, jumpers, gloves and scarves.

‘Possessions’ means any goods over which the pupil has or appears to have control – this includes desks, trays and bags.

A pupil’s possessions can only be searched in the presence of the pupil and another member of staff, except where there is a risk that serious harm will be caused to a person if the search is not conducted immediately and where it is not reasonably practicable to summon another member of staff.

### **Use of force**

Members of staff can use such force as is reasonable given the circumstances when conducting a search for knives or weapons, alcohol, illegal drugs, stolen items, tobacco and cigarette papers, fireworks, pornographic images or articles that have been or could be used to commit an offence or cause harm. Such force cannot be used to search for items banned

under the school rules.

## **After the search**

The power to seize and confiscate items – general - What the law allows: Schools' general power to discipline, as circumscribed by Section 91 of the Education and Inspections Act 2006, enables a member of staff to confiscate, retain or dispose of a pupil's property as a disciplinary penalty, where reasonable to do so.

Also note:

The member of staff can use their discretion to confiscate, retain and/or destroy any item found as a result of a 'with consent' search so long as it is reasonable in the circumstances. Where any article is reasonably suspected to be an offensive weapon, it must be passed to the police.

Staff have a defence to any complaint or other action brought against them. The law protects members of staff from liability in any proceedings brought against them for any loss of, or damage to, any item they have confiscated, provided they acted lawfully.

## **Items found as a result of a 'without consent' search**

What the law says:

A person carrying out a search can seize anything they have reasonable grounds for suspecting is a prohibited item or is evidence in relation to an offence.

Where a person conducting a search finds alcohol, they may retain or dispose of it. This means that schools can dispose of alcohol as they think appropriate but this should not include returning it to the pupil.

Where they find controlled drugs, these must be delivered to the police as soon as possible but may be disposed of if the person thinks there is a good reason to do so.

Where they find other substances, which are not believed to be controlled drugs these can be confiscated where a teacher believes them to be harmful or detrimental to good order and discipline. This would include, for example, so called 'legal highs'. Where staff suspect a substance may be controlled they should treat them as controlled drugs as outlined above.

Where they find stolen items, these must be delivered to the police as soon as reasonably practicable – but may be returned to the owner (or may be retained or disposed of if returning them to their owner is not practicable) if the person thinks that there is a good reason to do so.

Where a member of staff finds tobacco or cigarette papers they may retain or dispose of them. As with alcohol, this means that schools can dispose of tobacco or cigarette papers as they think appropriate but this should not include returning them to the pupil.

Fireworks found as a result of a search may be retained or disposed of but should not be returned to the pupil.

If a member of staff finds a pornographic image, they may dispose of the image unless they have reasonable grounds to suspect that its possession constitutes a specified offence (i.e. it is extreme or child pornography) in which case it must be delivered to the police as soon as reasonably practicable.

Where an article that has been (or is likely to be) used to commit an offence or to cause personal injury or damage to property is found it may be delivered to the police or returned to the owner. It may also be retained or disposed of. Where a member of staff finds an item which is banned under the school rules they should take into account all relevant circumstances and use their professional judgement to decide whether to return it to its owner, retain it or dispose of it.

Any weapons or items which are evidence of an offence must be passed to the police as soon as possible.